

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1378

Introduced by Assembly Member Portantino

February 18, 2011

~~An act to add and repeal Sections 12599.5 and 12635.5 of the Health and Safety Code, relating to fireworks, and making an appropriation therefor. An act to amend Sections 8547.2 and 8547.3 of, and to add Section 8547.14 to, the Government Code, relating to the Legislature.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1378, as amended, Portantino. ~~Fireworks: sale: training. California Whistleblower Protection Act: Legislature: employees.~~

The California Whistleblower Protection Act prohibits an employee, as defined to include specified employees in the executive and judicial branches of state government, from using his or her official authority or influence for the purpose of intimidating, threatening, coercing, or commanding any person for the purpose of interfering with his or her right to make a protected disclosure of improper governmental activity. The act requires the State Auditor to investigate and report on improper governmental activities, as specified. The act authorizes an employee or applicant for employment who files a written complaint alleging reprisal, retaliation, or similar prohibited acts to also file a copy of the written complaint with the State Personnel Board, together with a sworn statement that the complaint is true, under penalty of perjury. The act provides that any person who intentionally engages in acts of reprisal, retaliation, or similar prohibited acts against a state employee or applicant for state employment for having made a protected disclosure,

is subject to punishment for a misdemeanor, and shall be liable in an action for civil damages brought by the injured party.

This bill would make these provisions of the act applicable to the Legislature, except for procedures regarding notices of adverse action and the State Personnel Board and except that penalties would not apply to the extent that a Member of the Legislature is immune from liability under the doctrine of legislative immunity. The bill would authorize an employee of the Legislature or an applicant for employment with the Legislature to file a written complaint with his or her supervisor, manager, or other officer designated by the Committee on Rules of the Assembly or Senate, as applicable, alleging improper acts, together with a sworn statement that the complaint is true, under penalty of perjury, within one year of the most recent improper act complained about. The bill would require the Committees on Rules of the Assembly and Senate to each designate an officer to receive these written complaints. By expanding the scope of crimes under the act, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(1) Existing law authorizes the retail sale of safe and sane fireworks from June 28 to July 6 annually pursuant to a license issued by the State Fire Marshal, unless otherwise prohibited or regulated by law or ordinance.~~

~~This bill would authorize, until January 2, 2018, the sale of certified safe and sane fireworks from 9 a.m. December 26 through January 1 pursuant to a license issued by the State Fire Marshal, if authorized by a city, county, or city and county ordinance or resolution that may also restrict the hours of use of those fireworks. Since a violation of this provision or other existing related provisions in connection with the sale of those fireworks would be a misdemeanor, the bill would impose a state-mandated local program by creating new crimes.~~

~~(2) Existing law authorizes the State Fire Marshal, his or her salaried deputies, or any chief of a fire department, or his or her authorized representatives, any fire protection agency, or any other public agency authorized by statute to enforce the State Fire Marshal's regulations, to seize any fireworks described in specified provisions and to charge~~

any person, firm, or corporation, whose fireworks are seized, an amount that is sufficient to cover the cost of transporting, storing, and handling the seized fireworks. Existing law requires the State Fire Marshal to dispose of seized dangerous fireworks, as specified.

Existing law also requires the State Fire Marshal to establish and collect the original and annual renewal fees for fireworks licenses that are required by applicable laws.

This bill would require, until January 1, 2018, the State Fire Marshal to establish and collect an additional fee on permits issued to licensees in an amount necessary to enforce applicable laws with respect to training and education regarding dangerous fireworks. The fees would be deposited in the State Fire Marshal Dangerous Fireworks Training and Education Fund, which the bill would establish. Moneys in this fund would be continuously appropriated without regard to fiscal years to the State Fire Marshal for the purpose of training local fire and law enforcement agencies, as specified.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8547.2 of the Government Code is
2 amended to read:
3 8547.2. For the purposes of this article, the following terms
4 have the following meanings:
5 (a) (1) “Employee” means ~~an~~ any of the following:
6 (A) An individual appointed by the Governor, ~~or~~.
7 (B) An individual employed or holding office in a state agency
8 as defined by Section 11000, including, for purposes of Sections
9 8547.3 to 8547.7, inclusive, an employee of the California State
10 University, ~~or an~~.
11 (C) A Member or employee of the Legislature for purposes of
12 Sections 8547.3 to 8547.7, inclusive, except for those provisions
13 of Section 8547.4 concerning notice of adverse action and the
14 State Personnel Board.

1 (D) An individual appointed by the Legislature to a state board
2 or commission ~~and who is not a Member or employee of the~~
3 ~~Legislature. In addition, “employee” means a.~~

4 (E) A person employed by the Supreme Court, a court of appeal,
5 a superior court, or the Administrative Office of the Courts for the
6 purposes of Sections 8547.3 to 8547.7, inclusive, and Section
7 8547.13, except for those provisions of Section 8547.4 concerning
8 notice of adverse action and the State Personnel Board. ~~“Employee”~~

9 (2) For purposes of this subdivision, “employee” includes a
10 former employee who met the criteria of this subdivision during
11 his or her employment.

12 (b) “Illegal order” means a directive to violate or assist in
13 violating a federal, state, or local law, rule, or regulation, or an
14 order to work or cause others to work in conditions outside of their
15 line of duty that would unreasonably threaten the health or safety
16 of employees or the public.

17 (c) “Improper governmental activity” means an activity by a
18 state agency or by an employee that is undertaken in the
19 performance of the employee’s duties, undertaken inside a state
20 office, or, if undertaken outside a state office by the employee,
21 directly relates to state government, whether or not that activity is
22 within the scope of his or her employment, and that (1) is in
23 violation of any state or federal law or regulation, including, but
24 not limited to, corruption, malfeasance, bribery, theft of
25 government property, fraudulent claims, fraud, coercion,
26 conversion, malicious prosecution, misuse of government property,
27 or willful omission to perform duty, (2) is in violation of an
28 Executive order of the Governor, a California Rule of Court, or
29 any policy or procedure mandated by the State Administrative
30 Manual or State Contracting Manual, or (3) is economically
31 wasteful, involves gross misconduct, incompetency, or inefficiency.
32 For purposes of Sections 8547.4, 8547.5, 8547.7, 8547.10, and
33 8547.11, “improper governmental activity” includes any activity
34 by the University of California or by an employee, including an
35 officer or faculty member, who otherwise meets the criteria of this
36 subdivision. For purposes of Sections 8547.4, 8547.5, and 8547.13,
37 “improper governmental activity” includes any activity by the
38 Supreme Court, a court of appeal, a superior court, or the
39 Administrative Office of the Courts, or by an employee thereof,
40 who otherwise meets the criteria of this subdivision. *For purposes*

1 of Sections 8547.4, 8547.5, 8547.7, and 8547.14, “improper
2 governmental activity” includes any activity by the Legislature or
3 by an employee thereof who otherwise meets the criteria of this
4 subdivision.

5 (d) “Person” means an individual, corporation, trust, association,
6 a state or local government, or an agency or instrumentality of any
7 of the foregoing.

8 (e) “Protected disclosure” means a good faith communication,
9 including a communication based on, or when carrying out, job
10 duties, that discloses or demonstrates an intention to disclose
11 information that may evidence (1) an improper governmental
12 activity, or (2) a condition that may significantly threaten the health
13 or safety of employees or the public if the disclosure or intention
14 to disclose was made for the purpose of remedying that condition.
15 Protected disclosure specifically includes a good faith
16 communication to the Bureau of State Audits alleging an improper
17 governmental activity and any evidence delivered to the Bureau
18 of State Audits in support of the allegation. “Protected disclosure”
19 also includes, but is not limited to, a complaint made to the
20 Commission on Judicial Performance.

21 (f) “State agency” is defined by Section 11000. “State agency”
22 includes the University of California for purposes of Sections
23 8547.5 to 8547.7, inclusive, and the California State University
24 for purposes of Sections 8547.3 to 8547.7, inclusive. Sections
25 8547.3 to 8547.7, inclusive, shall apply to the Supreme Court, the
26 courts of appeal, the superior courts, ~~and~~ the Administrative Office
27 of the Courts, ~~and the Legislature~~ in the same manner as they apply
28 to a state agency.

29 SEC. 2. Section 8547.3 of the Government Code is amended
30 to read:

31 8547.3. (a) An employee may not directly or indirectly use or
32 attempt to use the official authority or influence of the employee
33 for the purpose of intimidating, threatening, coercing, commanding,
34 or attempting to intimidate, threaten, coerce, or command any
35 person for the purpose of interfering with the rights conferred
36 pursuant to this article.

37 (b) For the purpose of subdivision (a), “use of official authority
38 or influence” includes promising to confer, or conferring, any
39 benefit; effecting, or threatening to effect, any reprisal; or taking,
40 or directing others to take, or recommending, processing, or

1 approving, any personnel action, including, but not limited to,
2 appointment, promotion, transfer, assignment, performance
3 evaluation, suspension, or other disciplinary action.

4 (c) Any employee who violates subdivision (a) may be liable
5 in an action for civil damages brought against the employee by
6 the offended party, *except to the extent that a Member of the*
7 *Legislature is immune from liability under the doctrine of*
8 *legislative immunity.*

9 (d) Nothing in this section shall be construed to authorize an
10 individual to disclose information otherwise prohibited by or under
11 law.

12 SEC. 3. Section 8547.14 is added to the Government Code, to
13 read:

14 8547.14. (a) An employee of the Legislature or applicant for
15 employment with the Legislature may file a written complaint with
16 his or her supervisor, manager, or other officer designated for
17 that purpose by the Committee on Rules of the Assembly or Senate,
18 as applicable, alleging actual or attempted acts of reprisal,
19 retaliation, threats, coercion, or similar improper acts prohibited
20 by Section 8547.3, together with a sworn statement that the
21 contents of the written complaint are true, or are believed by the
22 affiant to be true, under penalty of perjury. The complaint shall
23 be filed within one year of the most recent improper act complained
24 about. The Committees on Rules of the Assembly and Senate shall
25 each designate an officer to receive written complaints for purposes
26 of this subdivision.

27 (b) Except to the extent that a Member of the Legislature is
28 immune from liability under the doctrine of legislative immunity,
29 any person who intentionally engages in acts of reprisal,
30 retaliation, threats, coercion, or similar improper acts against an
31 employee of the Legislature or applicant for employment with the
32 Legislature for having made a protected disclosure, is subject to
33 a fine not to exceed ten thousand dollars (\$10,000) and
34 imprisonment in the county jail for a period not to exceed one
35 year.

36 (c) In addition to all other penalties provided by law, except to
37 the extent that a Member of the Legislature is immune from liability
38 under the doctrine of legislative immunity, any person who
39 intentionally engages in acts of reprisal, retaliation, threats,
40 coercion, or similar acts against a state employee or applicant for

1 state employment for having made a protected disclosure shall be
2 liable in an action for damages brought against him or her by the
3 injured party. Punitive damages may be awarded by the court
4 where the acts of the offending party are proven to be malicious.
5 Where liability has been established, the injured party shall also
6 be entitled to reasonable attorney's fees as provided by law.

7 (d) This section does not prevent a supervisor, manager, or
8 other officer of the Legislature from taking, directing others to
9 take, recommending, or approving any personnel action or from
10 taking or failing to take a personnel action with respect to any
11 employee of the Legislature or applicant for employment with the
12 Legislature if the supervisor, manager, or other officer reasonably
13 believes any action or inaction is justified on the basis of evidence
14 separate and apart from the fact that the person has made a
15 protected disclosure.

16 (e) In any civil action, once it has been demonstrated by a
17 preponderance of evidence that an activity protected by this article
18 was a contributing factor in the alleged retaliation against a
19 former, current, or prospective employee, the burden of proof shall
20 be on the supervisor, manager, or other officer of the Legislature
21 to demonstrate by clear and convincing evidence that the alleged
22 action would have occurred for legitimate, independent reasons
23 even if the employee had not engaged in protected disclosures or
24 refused an illegal order.

25 (f) This article does not diminish the rights, privileges, or
26 remedies of any employee under any other federal or state law.

27 SEC. 4. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

36 SECTION 1. ~~Section 12599.5 is added to the Health and Safety~~
37 ~~Code, to read:~~

38 ~~12599.5. (a) Notwithstanding Sections 12599 and 12672, each~~
39 ~~year from 2012 to 2017, inclusive, the State Fire Marshal shall~~
40 ~~issue separate one-time retail licenses pursuant to this section that~~

1 shall authorize the retail sale of safe and sane fireworks within this
2 state only from 9 a.m. on December 26, of a year within 2012 to
3 2017, inclusive, until midnight of January 1 of the following year.
4 A license issued pursuant to this section shall be valid for only one
5 seven-day period and shall expire at the end of the period for which
6 it is valid. All fireworks sold pursuant to a license issued pursuant
7 to this section shall have been certified as safe and sane by the
8 State Fire Marshal as of June of the year in which the validity of
9 the license commences. No other license issued pursuant to this
10 chapter shall authorize the sale of fireworks during that period.

11 (b) No retail license shall be issued for the license period
12 authorized by this section unless the city, county, or city and county
13 having jurisdiction over the fixed location where the fireworks
14 would be sold adopts an ordinance or resolution allowing that sale,
15 and the application for that license is received by the State Fire
16 Marshal on or before December 15 of the year in which the validity
17 of the license is to commence. The ordinance or resolution
18 authorizing the sale of those fireworks may limit the period of use
19 of those fireworks to specified days and hours within the period
20 during which the sale is authorized by this section.

21 (c) This section shall become inoperative on January 2, 2018,
22 and, as of January 1, 2019, is repealed, unless a later enacted
23 statute, that is enacted before January 1, 2019, deletes or extends
24 the dates on which it becomes inoperative and is repealed.

25 SEC. 2. Section 12635.5 is added to the Health and Safety
26 Code, to read:

27 12635.5. (a) The State Fire Marshal Dangerous Fireworks
28 Training and Education Fund is hereby established in the State
29 Treasury. Notwithstanding Section 13340 of the Government Code,
30 this fund is continuously appropriated without regard to fiscal
31 years to the State Fire Marshal for the purpose of training local
32 fire and law enforcement agencies regarding the identification;
33 risks, dangers, and proper disposal associated with dangerous
34 fireworks seized pursuant to this part.

35 (b) Pursuant to Section 12630, the State Fire Marshal shall
36 establish and collect an additional fee on permits issued pursuant
37 to Section 12640 in an amount necessary to enforce this part with
38 respect to training and education regarding dangerous fireworks.
39 Notwithstanding Section 12635, these fees shall be deposited in

1 the State Fire Marshal Dangerous Fireworks Training and
2 Education Fund.

3 (e) A local fire department, a local fire protection agency, a
4 local law enforcement agency, or any other public agency
5 authorized by statute to enforce the State Fire Marshal's regulations
6 and whose jurisdiction has adopted an ordinance or resolution
7 pursuant to subdivision (b) of Section 12599.5 may apply to the
8 State Fire Marshal for a grant for its costs in developing or
9 implementing an education and training program pursuant to this
10 section.

11 (d) This section shall remain in effect only until January 1, 2018,
12 and as of that date is repealed, unless a later enacted statute, that
13 is enacted before January 1, 2018, deletes or extends that date.

14 SEC. 3. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.